

## **REMARKS**

The Office Action dated August 8, 2006, has been received and carefully noted. The following remarks are submitted as a full and complete response thereto.

Claims 1-42 are currently pending in the application, of which claims 1, 21, 31, and 42 are independent claims. Claims 1-42 are respectfully submitted for consideration.

### **Rejections under 35 U.S.C. 103(a)**

Claims 1-14 and 21-42 were again rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,541,927 of Kristol et al. ("Kristol") in view of U.S. Patent No. 6,490,584 of Barrett et al. ("Barrett"). The Office Action took the position that Kristol teaches all the elements of the claim except "the server configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information." The Office Action cited Barrett as allegedly curing this deficiency in Kristol. Applicants respectfully traverse this rejection.

Claim 1, upon which claims 2-14 and 41 depend, is directed to a network hub in a communications network comprising a server. The server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information. The network information includes information about the communication network.

Claim 21, upon which claims 22-30 depend, is directed to a communication apparatus including a network information table storing network information from the network information receiver. The communication apparatus also includes a network information transmitter selectively push transmitting the network information in the network information table without a request for the network information, and wherein the network information is information about the communication network. The network information includes information about the communication network.

Claim 31, upon which claims 32-40 depend, is directed to a communication apparatus including a network information receiver, operably coupled with a communication network, for receiving network information. The communication apparatus also includes a network information table for storing network information from the network information receiver. The communication apparatus further includes a network operations detector detecting the networking information and producing operational information of an operational state of the network. The communication apparatus additionally includes a network information transmitter, for transmitting the operational information of an operational state of the network without a request for the operational information. The network information includes information about the communication network.

Claim 42 is directed to a status apparatus for use in a communication network. The status apparatus includes a network hub in a communication network. The status apparatus also includes a server in communication with the network hub, configured to

push status information regarding the network hub to a client without a request for the status information from the client. The status information includes network information.

It is respectfully submitted that the combination of Kristol and Barrett fails to disclose or suggest all the elements of any of the presently pending claims.

Kristol is directed to a method of multicasting. Kristol generally discusses a method in which Source S sends a multi-cast packet to all destinations. Each destination that is first in the column sends its status to S, and each other destination in the column sends its destination to the first destination in the column. The first destination in the column ( $E_{i,1}$ ) locally remulticasts if  $E_{i,1}$  receives the multicast packet but a destination below it ( $E_{i,j}$ ,  $j \neq 1$ ) has not, and S remulticasts if a first destination in a column has not received the packet.

Barrett relates to user-centered push methods and systems. Barrett uses language like “pushing network information.” The way that Barrett defines “pushing network information” is, operationally, obtaining information from cyberspace, as illustrated in column 1, lines 20-27. In particular, Barrett’s “pushing network information” is defined operationally by commercial software applications like The Pointcast Network <sup>TM</sup>, Castanet Tuner <sup>TM</sup>, Netcaster <sup>TM</sup>, and Microsoft’s CDF channels. Accordingly, “pushing network information” as used by Barrett relates to pushing information on a network, as opposed to pushing information about a network.

Claim 1 recites the limitation “the server is configured to push status information to a client without a request for the status information from the client, wherein the status

information includes network information.” Kristol does not teach or suggest the limitation “the server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information,” as the Office Action correctly noted.

Barrett does not remedy the deficiencies of Kristol. Barrett also does not teach or suggest the limitation “the server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information.” Barrett deals with pushing information contained in a network. Additionally, it does not teach pushing information relating to the status of a network, it only discusses pushing information that may be of interest to a user based on a dynamic model that permits changing interest on the part of the user. In addition, Barrett does not indicate that Barrett’s server is a network hub in a communication network.

The Office Action, at page 8, item 22(A), responded to Applicants’ argument that Barrett does not disclose or suggest that the network information is information about a network, by asserting that it does, and citing the abstract; Figure 1; column 1, lines 5-11, 28-35, and 59-65; column 2, lines 55-67; and column 5, line 41 to column 6, line 47 of Barrett. However, each of these passages is either completely devoid of any relevant description or supports Applicants’ argument.

- The Abstract of Barrett describes the information as “headline and stock quote type information” as Applicants have argued. Accordingly, the

information Barrett describes is not comparable to the claimed network information.

- Figure 1 of Barrett does not specify what kind of information is supplied by information source 28. Applicants note, however, that when information source 28 is described in Barrett at column 11, lines 40-59, it is indicated that it can be a database that is accessed by the Internet, and can comprise a CD-ROM implementation. Applicants respectfully submit that this bolsters Applicants' argument that "network information" as used by Barrett is information on a network, not information about a network.
- The Field of the Invention section of Barrett, column 1, lines 5-11, does not specify what type of "network information" is being described. As discussed throughout Barrett, however, the network information is only information on a network, not information about a network.
- Column 1, lines 28-35 in the Background of the Invention section of Barrett describes the information as being related to a "user's interests" as Applicants have argued. Accordingly, the information Barrett describes is not comparable to the claimed network information.
- Column 1, lines 58-65 in the Background of the Invention section of Barrett describes the information as "research and commercial news" as Applicants have argued. Accordingly, the information Barrett describes is not comparable to the claimed network information.

- Column 2, lines 55-67, in the Summary of the Invention section of Barrett describes the information as relating to “user interests” as Applicants have argued. Accordingly, the information Barrett describes is not comparable to the claimed network information.
- Column 5, line 41 to column 6, line 47 in the Description of the Preferred Embodiment section of Barrett describes the information pushed to the user as “facts” as Applicants have argued. Accordingly, the information Barrett describes is not the claimed network information. Indeed, as explained at column 9, line 48, to column 10, line 56, examples of fact types includes things like headlines of news stories, for example, the headline “IBM Stock Soars.” This supports Applicants’ argument that the “network information” of Barrett is not comparable to the claimed “network information” because it is information on a network instead of about a network.

Applicants respectfully submit that the Office Action’s interpretation of Barrett’s network information as information **about** a network is not a fair or reasonable reading of Barrett. Barrett is essentially interested in pushing, to a user, headlines for news stories of interest to that user.

The response filed May 17, 2006, analyzed the cited passages in detail. The Office Action provides no response to the detailed analysis, but simply repeats the Office Action’s previous assertion that the cited passages teach what is claimed.

MPEP 707.07(f) sets forth the Examiner's obligation to answer all material traversed. Specifically MPEP 707.07(f) states that “the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.” The Office Action, repeating the rejection, does **not** answer the substance of the argument. Applicants’ are unable to discern upon what rational basis the USPTO is not persuaded by the detailed explanation of how Barrett fails to disclose or suggest “the server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information.”

It is essential that the Office Action address each of the arguments presented by Applicant, so that meaningful appellate review is possible. The Office Action, however, does not address the substance of Applicant’s arguments. Accordingly, if the rejection is maintained, a response to the arguments is respectfully requested in a new Non-Final Office Action.

With regard to Applicants’ argument that Barrett does not disclose that the server is a network hub, the previous Office Action mailed April 26, 2006, responded that it would have been obvious to apply the teaching of Barrett to a network hub of Kristol, because it would have “improved control through the information is easily reformatted locally and improved transmission efficiency through pushed without a request and archived for later use.”

Applicants respectfully disagreed with the Office Action's analysis. The Office Action's attempted combination is infeasible. There is no evidence that one of ordinary skill in the art would have been able to incorporate Barrett's server into a network hub. Indeed, such an implementation would have been counterintuitive, because it would not provide any benefit, and because it would decrease the modularity both of the network hub and Barrett's server.

The Office Action's combination of references is impermissible hindsight reconstruction, as described in MPEP 2145. To establish a *prima facie* case in any 35 U.S.C. 103 case, it is essential that Office personnel find some motivation or suggestion to make the claimed invention in light of the prior art teachings. *See, e.g., In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1996) and MPEP 2144.08. The Office Action does not provide proper motivation to combine the teachings of the references, and accordingly fails to provide a *prima facie* case for obviousness.

As MPEP Section 2143.01 indicates, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). In the present rejection, there is not even evidence that Barrett's server could be implemented as or on a network hub, much less that such a modification would be desirable. Accordingly, it is respectfully requested that this rejection be withdrawn.



Additionally, as previously noted, there is further flaw in the Office Action's assertion that Barrett's server could be implemented on the network hub of Kristol. The word "hub" does not appear in Kristol, and Kristol presents a method of multicasting which is designed to be carried out at "a source host," not a network hub, as explained by Kristol at column 2, lines 23-29. Accordingly, the combination of Kristol and Barrett do not teach or suggest the claimed "network hub." For this additional reason, it is respectfully requested that this rejection be withdrawn.

The present Office Action, at page 9, item 22(C) states that "a network hub in a communication network" is not being given patentable weight because it appears in the preamble. However, as discussed in MPEP Section 2111.02, "any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation."

Moreover, Applicants respectfully submit that "if the claim preamble, when read in the context of the entire claim recites limitations of the claim, or, if the claim preamble is 'necessary to give life meaning and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-6 (Fed. Cir. 1999).

The Office Action notes that a preamble is not accorded any patentable weight where it merely recites the intended use of a structure. However, the claims do not merely recite the intended use of a structure – they state what the structure is: a network

hub. Accordingly, it is respectfully submitted that the Office Action's reliance on *In re Hirao* and *Kropa v. Robie* is mistaken.

Furthermore, one of ordinary skill in the art would not have combined Kristol and Barrett. Kristol and Barrett take diametrically opposing approaches to communicating information. Kristol multicasts a packet and awaits status responses. Barrett observes requests for information, and obtains other unsolicited information, as illustrated in column 5, lines 24-31 of Barrett. In contrast, Kristol is uninterested in unsolicited information. Barrett models the user as having a dynamic interest in information. Kristol's source S has a static interest in status information. Barrett increases traffic by pushing unsolicited information to the client. Kristol's method is designed to eliminate unnecessary communication and traffic, as illustrated at column 2, lines 12-19. Thus, the asserted combination of Kristol and Barrett would change the principle of operation of Kristol, or render Kristol inoperable for its intended purpose. See MPEP 2143.01.

The Office Action does not address the argument above, which was also included in the response filed May 17, 2006. Thus, it is unrebutted in the record that the combination of Kristol with Barrett would render Kristol inoperable for its intended purpose. As such, there is no rational basis upon which the rejection can be upheld. Even the Office Action's response, at page 9, item 22(B), cannot resuscitate the combination.

The Office Action took the position at page 9, item 22(B), that the combination would have "improved control through [sic] the information is easily reformatted locally

and improved efficiency through [sic] pushed without a request and archived for later use.” Even if this were true (not admitted), it would still not provide motivation to combine the references because, as noted above, the trade-off would be the render of the primary reference, Kristol, inoperable for its intended purpose. Moreover, the Office Action does not provide any basis in the form of citation of evidence for the Office Action’s assertion that such improvement would be the result of the combination, and the references themselves do not address the issue of combination. Accordingly, the Office Action’s position is both unsupported by substantial evidence and does not outweigh the nugatory effects of the combination on the intended purpose of Kristol.

Accordingly, one of ordinary skill in the art would not have found teaching, motivation, or suggestion to combine Kristol and Barrett. And, even if one somehow combined Kristol and Barrett, the combination would not include the limitation, “the server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information,” as explained above. Accordingly, it is respectfully submitted that Kristol and Barrett, when taken singly or in combination do not teach all the elements of claim 1.

Claim 21 recites “a network information transmitter selectively push transmitting the network information in the network information table without a request for the network information.” The cited references do not teach or suggest at least this element of claim 21.

Kristol and Barrett do not teach or suggest “a network information transmitter selectively push transmitting the network information in the network information table without a request for the network information.” Kristol does not teach this element, as the Office Action implicitly acknowledged. Barrett does not remedy the deficiencies of Kristol. In particular, as with claim 1, in the context of claim 21, the term “network information” relates to information about a network, not information found in a network. Accordingly, Barrett does not teach or suggest “a network information transmitter selectively push transmitting the network information in the network information table without a request for the network information.” This is because Barrett does not teach or suggest the claimed “network information” or a component designed to selectively push or transmit the claimed “network information.” Please recall the arguments above regarding the impropriety of combining Kristol and Barrett, as those arguments apply with equal force to this claim. Accordingly, Kristol and Barrett, when viewed singly or in combination do not teach or suggest all the elements of claim 21.

Claim 31 recites, “a network information transmitter, for transmitting the operational information of an operational state of the network without a request for the operational information.” The Office Action implicitly acknowledged that Kristol does not teach or suggest this element. Barrett does not remedy the deficiencies of Kristol. In particular, Barrett does not teach or suggest the claimed “operational information of an operational state of the network” nor transmitting that information without a request for the operational information. Additionally, the arguments described above regarding the

impropriety of the combination of Kristol and Barrett should be applied here. Accordingly, Kristol and Barrett, whether viewed singly or in combination do not teach all of the elements of claim 31.

The Office Action asserted that Barrett teaches “transmitting the operational information of an operational state of the network without a request for the operational information,” as recited in claim 31. Applicants respectfully assert that Barrett does not teach such recitation of claim 31, because Barrett is principally concerned with pushing news story headlines to users, not with providing network information in the sense used in the present application.

The Office Action took the position that this feature is disclosed at Figure 1, and column 5, line 41, to column 6, line 47, of Barrett. However, both of these passages are utterly devoid of any reference to or concept of the “operational state of a network.” Thus, Applicants’ respectfully disagree that Barrett discloses these features in the cited passages.

Claim 42 recites “a network hub in a communication network.” As noted above, neither of the references provides this feature. Furthermore, claim 42 recites “a server in communication with the network hub, configured to push status information regarding the network hub to a client without a request for the status information from the client, wherein the status information includes network information.” For the reasons explained above, it is respectfully submitted that Barrett does not disclose pushing “network information” as used in the present application, but only information that can be obtained

through a network. Accordingly, it is respectfully requested that the rejection of claim 42 be withdrawn.

Claims 2-20 and 41 depend from claim 1, and therefore incorporate all of the limitations and are patentable for at least the reasons claim 1 is patentable. Claims 22-30 depend from claim 21, and therefore incorporate all of the limitations and are patentable for at least the reasons claim 21 is patentable. Additionally, with particular regard to claim 41, it is respectfully submitted that the Office Action's citation of column 1, lines 5-11 and 28-35 and column 5, lines 41-58 cannot possibly teach "wherein the status information comprises at least one of hub status information and server status information" is taught by the combination of references. It is unsurprising that the limitation "wherein the status information comprises at least one of hub status information and server status information" is not taught by the combination of references, because, as explained above, the information pushed by Barrett is not "network information" as the term is used in the claims. Accordingly, the combination of Barrett and Kristol do not disclose or suggest "wherein the status information comprises at least one of hub status information and server status information." Thus, it is respectfully submitted that the combination of cited references fails to disclose or suggest all of the elements of any of the dependent claims.

Claims 15-20 were rejected under 35 U.S.C. 103(a) as obvious over Kristol and Barrett in view of U.S. Patent No. 5,651,006 of Fujino et al. ("Fujino"). The Office Action took the position that Kristol and Barrett teach all of the elements of the claims

except that the information is a management information base (MIB) statistic and several other elements relating to an MIB engine. The Office Action cited Fujino as allegedly curing this deficiency in Kristol and Barrett. This rejection is respectfully traversed for the following reasons.

Kristol and Barrett are discussed above. Fujino is directed to a hierarchical network management system. Fujino generally describes that information can be held in an MIB format. Fujino relates the use of MIB format data to large-scale communications networks.

It is respectfully submitted that Kristol, Barrett, and Fujino do not teach all the elements of any of the present pending claims.

Claims 15-20 depend from independent claim 1. The arguments as applied to claim 1 above, apply with equal force here, and thus are incorporated by reference. Additionally, Fujino does not remedy the above-described deficiencies of Kristol and Barrett. In particular, Fujino does not teach or suggest the limitation “the server is configured to push status information to a client without a request for the status information from the client, wherein the status information includes network information.” Indeed, Fujino uses the simple network management protocol (SNMP) described in Fujino for communication among managers and sub-managers.

Thus, Barrett, Kristol, and Fujino whether taken singly or in any combination, do not teach all the elements of any of the presently pending claims. Moreover, one of

ordinary skill in the art would not find teaching, motivation, or suggestion to combine Barrett, Kristol, and Fujino.

Additionally, to the extent that it was not previously considered, network information has been defined in the claims as “information about the communication network.” Therefore, it is respectfully submitted that this definition rebuts the previous position of the Office Action that information contained on a network is network information. The Office Action must give weight to Applicants’ definitions, because Applicants are entitled by law to be their own lexicographer. Failure to accord proper weight to Applicants’ definitions constitutes legal error. Accordingly, withdrawal of the rejections is respectfully requested.

### **Conclusion**

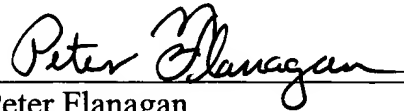
For the reasons explained above, it is respectfully submitted that each of claims 1-42 recites subject matter that is neither disclosed nor suggested in the prior art of record. Accordingly, it is respectfully requested that all of claims 1-42 be allowed, and this application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicants’ undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.



In the event this paper is not being timely filed, Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

A handwritten signature in black ink, reading "Peter Flanagan", written over a horizontal line.

Peter Flanagan  
Registration No. 58,178

Customer No. 32294  
SQUIRE, SANDERS & DEMPSEY LLP  
14TH Floor  
8000 Towers Crescent Drive  
Tysons Corner, Virginia 22182-2700  
Telephone: 703-720-7800  
Fax: 703-720-7802  
PCF:kmp